

Amendments to the Drawings

The attached drawing sheet includes changes to FIG. 3. This sheet, which is labeled "Replacement Sheet," replaces the original sheet including FIG. 3.

Attachment: Replacement Sheet

REMARKS/ARGUMENTS

This application has been reviewed in light of the Office Action mailed on January 24, 2007. Claims 1-17 are pending in the application with Claims 1 and 8 being in independent form. By the present amendment, Claims 1-3, 8 and 17 have been amended and FIG. 3 has been amended. No new matter is believed to be introduced by the amendments. In view of the amendments and remarks to follow, reconsideration and allowance of this application are respectfully requested.

Objections to the Specification

The specification was objected to because it lacked an Abstract. Accordingly, Applicants have included an Abstract herewith.

The specification was also objected to under 35 U.S.C. §112, sixth paragraph. The Examiner has required clarification of "means for connecting" and "means for maintaining." Accordingly, Applicants have added two paragraphs to the specification that further define "means for connecting" and "means for maintaining." The language in these paragraphs has been taken from the original claims, and thus do not constitute new matter.

Therefore, Applicants' believe the objections to the specification have been overcome and respectfully request withdrawal of these objections.

Objections to the Drawings

The drawings were objected to the Office Action as failing to comply with 37 C.F.R. 1.84(p)(5). Specifically, it was asserted that the reference numbers for

electrically conductive tube (13), inner insulator (34), outer insulator (35) and handgrip (53) are not included in the figures. With regard to the electrically conductive tube (13) and handgrip (53), Applicants' point out the Figure 1 of the original application includes both of these reference numbers. A copy of the original Figure 1, including reference numbers 13 and 53 is appended hereto. With regard to the inner insulator (34) and the outer insulator (35), Figure 3 has been amended to include the reference numbers. A corrected drawing sheet of Figure 3 is appended hereto and is labeled "Replacement Sheet." Accordingly, Applicants' believe the objection to the drawings has been overcome and respectfully request withdrawal of this objection.

Objections to the Claims

Claims 2 and 3 were objected to in the Office Action. It was asserted that Claim 2 should read, "means for connecting include" rather than "connecting means include." It was also asserted that Claim 3 should read, "means for maintaining include" rather than "maintaining means include." Applicants' have amended Claims 2 and 3 accordingly and thus request withdrawal of this objection.

Claim Rejection – 35 U.S.C. §102

Claims 1 and 3-17 were rejected under 35 U.S.C. §102(a) over U.S. Publication No. 20020188294 (now U.S. Patent No. 7,083,618) to Couture. Applicants have hereby amended independent Claims 1 and 8 to include the recitation, "wherein the means for connecting includes a pushrod for connecting the first jaw member to a source of electrosurgical energy." In paragraph 9 of the Office Action, the Examiner concedes that Couture does not disclose "a pushrod for connecting a first jaw member

to a source of electrosurgical energy.” Thus, for at least these reasons, Applicants’ believe that the rejection under 35 U.S.C. §102(a) of Claims 1 and 8, and Claims 3-7 and 9-17, which depend therefrom, has been overcome and request withdrawal of this rejection.

Claim Rejection – 35 U.S.C. §103

Claim 2 was rejected under 35 U.S.C. §103(a) over Couture in view of U.S. Patent No. 5,573,534 to Stone. In the Office Action, it was asserted that Couture discloses the claimed device, except for a pushrod for connecting a first jaw member to a source of electrosurgical energy and that Stone discloses such a pushrod. As mentioned above, Applicants’ have hereby amended Claims 1, 2 and 8 to include the pushrod in independent Claims 1 and 8, thus making this rejection applicable to amended Claims 1 and 8.

With respect to the Examiner’s rejection of Claim 2 (now applicable to Claims 1 and 8) under 35 USC §103(a) as being unpatentable over U.S. Patent Publication 20020188294 (now U.S. Patent No. 7,083,618) to Couture, it is respectfully submitted that this reference qualifies as art under 35 USC §102(e) and is owned by a common Assignee of record, namely, Sherwood Services AG, and is therefore not properly citable as prior art against the present application.

More particularly and as per MPEP § 706.02(I), the present application was filed after November 29, 1999 and on information and belief the claims of the present application and the cited publication relate to subject matter that were, at the time the invention was made, owned by the same corporation and under an obligation of assignment to the same corporation, namely, Sherwood Services AG. In accordance

with MPEP §706.02(I), the above statement is sufficient evidence to show common ownership at the time the invention was made:

Applications and references (whether patents, patent applications, patent application publications, etc.) will be considered by the examiner to be owned by, or subject to an obligation of assignment to the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person. MPEP §706.02(I).

In view of the foregoing, it is respectfully submitted that the Couture publication is disqualified as prior art against Claim 2 (now applicable to Claims 1 and 8) of the present disclosure. Claims 2-7 and 9-17, which depend from Claims 1 and 8, are also believed to be allowable for at least the same reasons as specified above. Accordingly, for at least these reasons, Applicants respectfully request withdrawal of this rejection and earnestly seek allowance of Claims 1-17.

Additionally, in the Conclusion section of the Office Action, it was noted that U.S. Patent No. 6,270,497 to Sekino discloses a pushrod that connects a jaw member to an electrosurgical source. However, Sekino does not disclose such a laparoscopic bipolar electrosurgical instrument for sealing tissue including, *inter alia*, "means for connecting the jaw members to a source of electrosurgical energy such that the opposable seal surfaces are capable of conducting electrosurgical energy through tissue held therebetween" and "wherein the means for connecting includes a pushrod for connecting the first jaw member to a source of electrosurgical energy," as claimed by Applicants. For at least these reasons, Applicants' believe Claims 1 and 8, and the claims that depend therefrom, are patentable over the art of record.

Claim 17 and the first full paragraph on page 10 have been hereby amended to correct typographical errors.

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application, namely Claims 1-17, are believed to be in condition for allowance.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call the Applicants' undersigned attorney at the Examiner's convenience.

Please charge any deficiency as well as any other fee(s) that may become due under 37 C.F.R. § 1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s), to Deposit Account No. 21-0550.

Respectfully submitted,



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